IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3183 OF 2007.
IN
SUIT NO. 322 OF 2005.

Tajas Thakkar. ... Plaintiff.
Versus.
Vipin Talvar. ... Defendant.

Shri Chira Shah i/by M/s.Bhaskar & Co.for the Plaintiff.

Shri K.P.Tiwari for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 10th October, 2007.

P.C.:

1. The submissions of the learned Counsel appearing for the parties were heard yesterday. With a view to appreciate the submissions made by the learned Counsel appearing for the parties, it will be necessary to briefly refer to the facts of the case.

2. The present suit is filed by the Plaintiff for recovery of a sum of Rs.9,97,330/- payable by the Defendant to the Plaintiff being the balance of the price of goods sold and delivered by the Plaintiff to the Defendant. According to the case of the Plaintiff, the Defendant from time to time from March 2001 to October 2003 placed various orders with the Plaintiff at Mumbai to supply textile chemicals. Accordingly, the Plaintiff sold and delivered textile chemicals to the Defendant. It is the case of the Plaintiff that the

delivery of the goods was accepted by the Defendant without raising any dispute or complaint regarding the quality, quantity or the price. According to the case of the Plaintiff after adjusting the payments made by the Defendant from time to time a sum of Rs.6,65,646/- is due and payable by the Defendant on account of the price of goods. The suit is filed for recovery of the said amount with interest.

3. The present Notice of Motion is taken out by the Defendant on the basis that the Suit No.342 of 2004 filed by the Defendant against the Plaintiff in the Court of the Civil Judge, Senior Division at Amritsar. The prayer in this Notice of Motion is for grant of stay of the suit by invoking the provisions of section 10 of the Code of Civil Procedure, 1908. The said suit in the Court at Amritsar is filed by the Defendant contending that the chemicals supplied by the Plaintiff were of inferior quality. It is alleged that finished clothes manufactured by using the chemicals was damaged due to the sub-standard and inferior quality of the chemicals. It is alleged that the Defendant supplied the finished goods to M/s.J.R.Processors Ltd. It is alleged by the Defendant that the said M/s.J.R.Processors Ltd. stopped making payment of the price to the Defendant. The dispute between the Defendant and M/s.R.Processors Ltd., was referred to the Arbitrators and an Award has been

passed against the Defendant for the sum of Rs.5,46,500/- in favour of M/s.J.R.Processors Ltd. The aforesaid suit filed by the Defendant in the Court at Amritsar is for recovery of a sum of Rs.1,06,500/- being the loss caused to the Defendant due to the inferior quality of chemicals and for recovery of a sum of Rs.35,000/- paid by the Defendant to the Plaintiff.

4. The submission of the learned Counsel for the Defendant is that the issue involved in both the suits is the same. The said issue is whether the goods supplied by the Plaintiff to the Defendant were of interior quality and whether the Defendant is liable to pay the price of the goods to the Plaintiff. It is submitted that the said issues are directly substantially in issue in the suit pending in the Court at Amritsar.

5. The learned Counsel for the Plaintiff opposed the motion by submitting that the Defendant is relying upon an Award of the Arbitrators purportedly made in a dispute between M/s.J.R.Processors Ltd. and the Defendant. He pointed out that the Plaintiff is not a party to the said arbitral proceedings. He pointed out that the case made out by the Defendant regarding inferior quality of the goods is totally an after-thought. He submitted that the suit filed by the

Defendant in the Court at Amritsar is totally devoid of any merit and therefore, no case is made out for grant of stay.

6. I have carefully considered the submissions of the learned Counsel appearing for the parties. It is an admitted position that the goods subject matter of this suit as well as the subject matter of the suit filed by the Defendant in the Court at Amritsar are the same. According to the case of the Plaintiff in the suit in this Court, the delivery of the goods was accepted by the Defendant without raising any objection regarding its quality, quantity and the value and therefore, the Defendant is liable to pay the price of the goods. The defence of the Defendant in this suit is that the goods were of inferior quality and therefore, the Defendant is not liable to make payment of the price of the said goods.

7. The claim made by the Defendant in the suit filed in the Court at Amritsar is for recovery of the amount of loss allegedly caused to the Defendant on account of the inferior quality of the goods supplied by the Plaintiff. Therefore, the issue arising in the suit at Amritsar is whether the goods supplied by the Plaintiff in the present suit to the Defendant were of requisite quality or whether the same were of inferior

quality. In the present suit filed by the Plaintiff in this Court, the same issues will arise for consideration of this Court. In the circumstances, section 10 of the said Code will be squarely attracted as the suit filed in the Court at Amritsar is admittedly a previously instituted suit. Hence Notice of Motion must succeed.

8. Accordingly trial of Suit No.322 of 2005 will remain stayed till the disposal of Suit No.342 of 2004 filed by the Defendant against the Plaintiff in the Court of the Civil Judge, Senior Division at Amritsar. Notice of Motion is disposed of accordingly.

Judge.